No. 74, ORIGINAL

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In The

Supreme Court of the United States

October Term, 1988

STATE OF GEORGIA,

Plaintiff,

v.

STATE OF SOUTH CAROLINA,

Defendant.

ON THE REPORTS OF THE SPECIAL MASTER

MOTION FOR LEAVE TO FILE REBUTTAL BRIEF AND REBUTTAL BRIEF OF THE STATE OF GEORGIA

PATRICIA T. BARMEYER
Senior Assistant
Attorney General

MICHAEL J. BOWERS
Attorney General

H. PERRY MICHAEL
Executive Assistant
Attorney General

WILLIAM B. HILL, JR.
Deputy Attorney
General

SARAH EVANS LOCKWOOD
Special Assistant
Attorney General

Please serve:

PATRICIA T. BARMEYER
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-7298

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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MOTION FOR LEAVE TO FILE REBUTTAL BRIEF

Comes now the State of Georgia, by and through the Attorney General of Georgia, and respectfully asks leave of the Court to file its Rebuttal Brief, submitted herewith, in order to reply to the Response of the State of South Carolina to Georgia's Exceptions and Brief. The States of Georgia and South Carolina have given mutual consent to the filing of rebuttal briefs, and the Rebuttal Brief of the

State of South Carolina has been ordered filed by the Court.

Respectfully submitted,

PATRICIA T. BARMEYER
Senior Assistant Attorney General
Counsel of Record for the Plaintiffs

MICHAEL J. BOWERS
Attorney General

H. PERRY MICHAEL
Executive Assistant Attorney General

WILLIAM B. HILL, JR.
Deputy Attorney General

SARAH EVANS LOCKWOOD
Special Assistant Attorney General

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ON THE REPORTS OF THE SPECIAL MASTER

REBUTTAL BRIEF OF THE STATE OF GEORGIA

ARGUMENT

1. Georgia's dominion and control over Barnwell Island since at least 1955 is the practical consequence of the Fifth Circuit decision in *United States v. 450 Acres of Land* and of the Supreme Court's refusal to allow South Carolina to file an original action; South Carolina has no legal basis for avoiding the import of the fact that the status quo is Georgia possession.

In its Response, South Carolina contends that Georgia has given too much significance to the litigation involving Barnwell Island in the 1950's and, in addition,

that Georgia is somehow unfairly capitalizing on events over which the State of South Carolina had no control. The relative positions of the two States as litigants in this case make these contentions singularly unpersuasive.

First, it must be pointed out that the Georgia claim to Barnwell Island is based squarely on the 1787 Treaty of Beaufort as construed in *Georgia v. South Carolina*, 257 U.S. 516, 521 (1922), and not on the decision in *United States v. 450 Acres of Land*, 220 F.2d 353 (5th Cir. 1955).[1] South Carolina has now finally conceded that the Barnwell Islands in existence in 1787 were reserved to Georgia by the Treaty. S.C. Exceptions; S.C. Response at 21.

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[1] South Carolina contends that Georgia's failure to except to the Special Master's recommendation on Rabbit Island, one of the Barnwell Islands in existence at the time of the Treaty, indicates that Georgia relies exclusively on *United States v. 450 Acres of Land*. S.C. Response at 15-16. However, Georgia's decision not to pursue the matter of Rabbit Island rests not only on the fact that Rabbit Island was not part of the land condemned in Georgia in *United States v. 450 Acres of Land*, but also, much more significantly, on the lack of any evidence of exercise of Georgia jurisdiction over Rabbit Island subsequent to the 1760 Georgia grant. Apparently, Rabbit Island was amalgamated into the South Carolina shore at such an early date (Pre-1855, Ist Report at 34), that no one in Georgia recognized, until the mid-1970's, that Rabbit Island had clearly been an island in the Savannah River at the time of the Treaty and, therefore, reserved to Georgia. The State of Georgia did not oppose the condemnation of Rabbit Island in federal court in South Carolina in 1959, S.C.Ex. B-71, and even Georgia and federal maps consistently depict Rabbit Island as being in South Carolina. By these State actions and inactions, the State of Georgia may reasonably have been deemed to have acquiesced in South Carolina's jurisdiction. The facts concerning the remaining

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Secondly, while it is of course true that only this Court has jurisdiction to establish a boundary between two States, *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 726-27 (1838), it is likewise beyond peradventure that the lower courts have the authority, indeed the responsibility, to decide cases by applying a boundary which has been settled by compact or by judicial construction. *See Vermont v. New Hampshire*, 289 U.S. 593 (1933); *Virginia v. Tennessee*, 148 U.S. 503 (1893); *see also, e.g., Tyson v. Iowa*, 283 F.2d 802 (8th Cir. 1960). Certainly the District Court in Georgia and the Fifth Circuit had authority to decide the condemnation case presented to the court, even though there was a challenge to the jurisdiction. *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) at 727 (1838); *Fowler v. Miller*, 3 U.S. (3 Dall.) 411-14 (1793); *Uhlhorn v. U.S. Gypsum Co.*, 366 F.2d 211, 217 (8th Cir. 1966); *Davis v. Anderson-Tully Co.*, 252 F.2d 681, 685 (8th Cir. 1918).

Thirdly, while seeking to impose on Georgia the onus of constructive notice of occasional acts by private citizens and county officials, South Carolina seeks to minimize the significance and the practical effect of a decision rendered by the federal judicial system, of which South Carolina had actual notice. The State of South Carolina was named as a defendant in *United States v. 450 Acres of*

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Barnwell Islands present a far different picture. The State of Georgia can hardly be prejudiced regarding the most important area in dispute because of the decision to present to the Court only those issues in which Georgia is clearly imbued with the strength of law and of equity.

Land, and, although the Attorney General of South Carolina was apparently not served with the complaint, the Sheriff, Tax Assessor and Auditor of Beaufort County were formally served. Ga. Ex. 378. It is ironic that South Carolina discounts the formal legal notice to these individual county officers, S.C. Response at 7, 11, when South Carolina's case of prescription and acquiescence rests in large part on the taxing and law enforcement activities of these very county officials. The fact of actual notice to the State of South Carolina itself, during the pendency of the case, is evidenced by South Carolina's motion to initiate an original action in the Supreme Court, which referred to the condemnation action, while the petition for a writ of certiorari in *United States v. 450 Acres of Land* was pending. Ga. Ex. 378; Ga. Ex. 379; 350 U.S. 826 (1955); S.C. Response at 9.

Finally, crediting the full significance of the decision in *United States v. 450 Acres of Land* and the practical consequences thereof imposes no inequity upon South Carolina, for South Carolina's present posture depends in large part upon her own actions and inactions. South Carolina clearly made a tactical decision to seek to file an original action *instead of* appearing in *United States v. 450 Acres of Land*.[2] While South Carolina attempts to suggest

[2] An amicus brief by the State of South Carolina would certainly have been given consideration by the Fifth Circuit on a motion for rehearing, and by the Supreme Court on a petition for certiorari. Moreover, motions to intervene pursuant to Rule 24, Fed.R.Civ.P., have been granted even on appeal, in appropriate circumstances. *See Hurd v. Illinois Bell Telephone Co.*, 234 F.2d 942 (7th Cir. 1956).

impropriety in Georgia's statement to the Fifth Circuit that the boundary line was not in dispute between the sovereigns, S.C. Response at 8-9, there is no evidence of any communication from the State of South Carolina to the State of Georgia asserting a claim to jurisdiction until the 1955 filing of a motion to file an original action, which came nearly six months after the Fifth Circuit decision.

South Carolina seeks to bear no responsibility for the refusal of the Court to allow the filing of an original action in 1955 and again in 1957.[3] However, a careful review of the South Carolina motions for leave to file complaint suggests a number of possible grounds for the Court's decision not to entertain the case. Neither motion makes any allegation of attempts to resolve the dispute with Georgia or of efforts to exhaust all available remedies before coming to the Supreme Court; such allegations are generally considered essential elements in a plea to persuade the Court to exercise its original jurisdiction. *See, e.g., Georgia v. Tennessee Copper Company*, 206 U.S. 230, 236 (1907); *Louisiana v. Texas*, 176 U.S. 1, 18 (1900); *see also* "The Original Jurisdiction of the United States Supreme Court," 11 Stan.L.Rev. 665, 696 (1959).

The Court has customarily refused to exercise original jurisdiction where it appears that the compiaining state is only a nominal party suing on behalf of individual citizens rather than as a sovereign entity. *E.g., Maryland v. Louisiana*, 451 U.S. 725, 737 (1981); *see also* R. L.

[3] South Carolina unreasonably seeks to blame her lack of success upon "Georgia's knowing unilateral evasion of the exclusive jurisdiction of this Court to hear and decide interstate boundary disputes." S.C. Response at 15.

Stern, E. Gressman, S. M. Shaprio, *Supreme Court Practice* (6th ed. 1986) at 474. South Carolina's motion seeking to file an original action revealed that South Carolina was asserting the interests of the private claimant Pinckney and included only a perfunctory declaration of sovereign state interest in the land in dispute. Ga. Ex. 379.

Moreover, South Carolina's motions to file original actions may have been denied for failure to raise any meritorious claim. *See, e.g., Alabama v. Texas* 347 U.S. 272 (1954). South Carolina was impermissibly seeking to use the doctrine of prescription and acquiescence in an offensive rather than defensive way, in seeking to obtain territory by prescription and acquiescence. As Georgia has pointed out, Ga. Brief at 17-18, the decisions applying prescription and acquiescence to interstate boundary disputes implement the doctrine to preserve the status quo and do not support forays for the acquisition of additional territory. *See, e.g., Michigan v. Wisconsin,* 270 U.S. 295, 308 (1926); *Arkansas v. Tennessee,* 246 U.S. 158, 172 (1918). Perhaps most telling, the first motion failed to plead any assertion of jurisdiction by the State of South Carolina prior to the motion, as Georgia pointed out in its brief in opposition. Ga. Ex. 379 at 15.

The pleadings filed by South Carolina in an effort to initiate an original action in the Supreme Court were not only inartful but also lacking in any sense of urgency; for these inadequacies, only the State of South Carolina can be held responsible. Whatever the reasons which led the Court to deny the petitions filed by South Carolina in the 1950's, the consequences are the same: Georgia, and Georgia alone, has exercised exclusive jurisdiction and sovereignty over Barnwell Island since at least 1955. The

necessary and unavoidable result is that South Carolina's claim of sovereignty by prescription, which rests on long-continued possession, must fail as a matter of law. The public interest in favor of the stability of order between the States, which forms the theoretical basis for the doctrine of prescription and acquiescence, *Arkansas v. Tennessee,* 310 U.S. 563, 570 (1940), requires that the status quo of Georgia dominion over Barnwell Island be maintained.

2. South Carolina has failed to prove sufficient actual or constructive notice to Georgia such that Georgia's inaction prior to 1952 can be considered acquiescence.

The first actual notice to Georgia of South Carolina's claim to Barnwell Island came with the filing of South Carolina's motion for leave to file complaint in the Supreme Court in 1955. Ga. Ex. 379. Recognizing that earlier constructive notice is essential to the claim of acquiescence, South Carolina relies on activities on Barnwell Island and documents of record. Neither category of proof is sufficient in the present case.

Assuming, as South Carolina contends, that Savannah residents saw the Barnwells possessing and cultivating Barnwell Island, such individuals may have been put on notice of their claim of title. However, even if knowledge of such possession could be imputed from Savannah residents to the State of Georgia (a proposition for which South Carolina has provided no authority), notice of possession and the resultant notice of a claim of title fails to constitute notice to the State of Georgia of the jurisdiction under which that possession and title were claimed, and the cases cited by South Carolina, S.C. Response at 30-31,

do not hold otherwise. *United States v. Bighorn Sheep Co.*, 9 F.2d 192 (D. Wyo. 1925), has nothing to do with boundaries between sovereigns; the decision holds that open possession gave notice to the government of the allegedly fraudulent title, such that the United States was bound by a statute of limitations relating to suits to annul the issuance of a land patent. *New Mexico v. Texas*, 275 U.S. 279 (1927), supports only the general proposition that evidence of acquiescence may be a supporting factor in the determination of an interstate boundary line. The remaining cases cited by South Carolina deal only with title disputes between private parties.[4]

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[4] *Landes v. Brandt*, 51 U.S. (10 How.) 348, 375 (1850), stands only for the general principle that open and notorious occupancy constitutes notice of adverse possession. In *Marsh v. Brooks*, 55 U.S. (14 How.) 513 (1852), another dispute between private parties, the Court found that the Indians had had constructive notice of the settler's claim since his possession was open and notorious "in their midst." 55 U.S. at 524. Even if this case could be read to hold that a white settler's occupation of land was notice to the Indians of both his adverse possession and his claim of title under a different sovereign, the Barnwells' possession of the islands gave no notice of the jurisdiction under which they were claiming, for there was nothing about their possession to give rise to any indication of a different jurisdiction. Archibald Smith, the South Carolina grantee, was a resident and citizen of Savannah; his possession of the Barnwell Islands created no inference that he was claiming under a grant from South Carolina. There is no evidence that he or his descendents hoisted the flag of South Carolina on Barnwell Island. South Carolina, citing *Noyes v. Hall*, 97 U.S. 34, 38 (1878), for the rule that visible and open possession of property is the equivalent of recordation, implies that even if

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South Carolina argues that Georgia officials were charged not only with knowledge that the Treaty of Beaufort placed all Savannah River islands in Georgia but also with knowledge of their own records, S.C. Response at 27-28, but fails to specify at what point in time the State of Georgia could reasonably have been charged with constructive knowledge of a South Carolina claim by relating what was visible on the Barnwell Islands to what was of record. There was no activity on these marsh islands until the 1840's, when diking and cultivation for rice was begun. The Civil War interrupted all normal activities along the Savannah River, and farming was not resumed until 1868. By 1882 the Barnwells had abandoned all their rice lands on the Savannah River. In the entire period of actual, though not continuous, occupation of Barnwell Island, approximately 1848-1882, there were no documents of record in Chatham County which showed that anyone thought these islands were in South Carolina. The 1868 acknowledgment of distribution under the marriage settlement refers only to "lands in South Carolina." S.C. Ex. B-10(3). There was no longer any actual possession or cultivation of the Barnwell Islands

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the 1868 deeds were not recorded in South Carolina until 1930, the fact of the visible possession of the islands by the Barnwells should have put the State of Georgia on notice of their claim. Such actual possession (which terminated by 1882) would surely have put a prospective purchaser on notice, as *Noyes v. Hall* held, but connecting notice of possession and thus of title to notice of jurisdiction is a leap that neither the facts nor the law supports.

by the time the 1896 deed was recorded in the Chatham and Beaufort County deed records, S.C. Ex. B-10(10), (11).[5]

South Carolina states that the Barnwell Islands were "plainly visible from the City of Savannah (two and one-half miles away)" and quotes the Special Master's statement that the buildings and the extent of cultivation were "readily determinable from Savannah." S.C. Response at 27, citing 1st Report at 43. A photograph taken from a steeple adjacent to the Savannah waterfront in December, 1864, Ga. Ex. 420, included in this brief as Appendix I, demonstrates the limited view of the islands from Savannah. In this fine photograph the Barnwell Islands are hazy areas barely visible on the horizon. T-XIX-9. Thus, while a person in Savannah might be able to discern the general location of the Barnwell Islands, he would certainly not have been able to observe any details of activity there. *Id.* Although the islands are plainly visible from Fort Jackson, across the Savannah River on the Georgia mainland, there is no evidence that any personnel were garrisoned at the fort after the Civil War. Even if activities on the Barnwell Islands were observed, there is no proof of activities which would have evidenced the claim of conflicting jurisdiction, for there were never any schools, roads or other public improvements by South Carolina or

[5] The 1896 deed refers to Hog, Rabbit and Long Islands as being in Beaufort County, South Carolina, but it does not describe the islands with reference to the Savannah River nor does it include a plat. S.C. Ex. B-10(10), (11). While apparently the names "Hog", "Rabbit" and "Long" Islands were well known among Barnwell family members, there is no evidence that this nomenclature was recognized or used by others.

Beaufort County on the Barnwell Islands.[6] *Cf. Arkansas v. Tennessee*, 310 U.S. 563 (1940).

By the 1950's, the Barnwell Islands were being used as a spoil disposal area by the Corps of Engineers and all evidence of possession by the Barnwells had long been obliterated. Georgia's assertion in the Fifth Circuit and the Supreme Court that the Barnwell Islands were ungranted State lands was reasonable, although inaccurate in view of the 1760 Georgia grant to Tannatt, because lands subject to the ebb and flow of the tide were generally not granted to private parties by the Crown or the State but, rather, were held by the sovereign in trust for the public. *See Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988); *State v. Ashmore*, 236 Ga. 401, 224 S.E.2d 334 (1976).

The long period of inaction by Georgia regarding Barnwell Island implies no acquiescence, unless knowledge on the part of the State is proved or can be properly presumed and unless the circumstances required Georgia to take action to register an objection. *See* Y. Blum, *Historic Titles in International Law* (1965) at 133, 138-39 ("[S]ilence, per se, even if persisting for a long period of time, should not be credited with absolute validity unless the circumstances would have required and enabled anybody wishing to signify its disapproval to do so." "Only if the affected State's knowledge can be proved, or may be properly presumed, can the state against which the adverse possession is meant to operate be expected to

[6] During the Civil War a battery was constructed on the largest of the Barnwell Islands by the Confederacy in order to protect the City of Savannah. This lone public improvement cannot be attributed to either State.

make known its objection to it.") South Carolina contends that even a minimally diligent inquiry would have revealed that the islands were being claimed as property in South Carolina under a South Carolina grant. S.C. Response at 28. If that be the case, it is interesting to note that such a minimally diligent inquiry had not been made by South Carolina as late as 1955 when South Carolina sought to file a complaint in the Supreme Court. Ga. Ex. 379. Not until its motion for leave to file complaint in 1957 did South Carolina refer to the existence of the 1813 grant to Archibald Smith. Ga. Ex. 380.

The first actual notice to the State of Georgia that *anyone* was claiming that Barnwell Island was in South Carolina came with Pinckney's motion to dismiss the condemnation action for lack of jurisdiction. Ga. Ex. 378. Once put on notice, Georgia acted promptly by intervening in *United States v. 450 Acres of Land* to assert her dominion and sovereignty; Georgia prevailed and since that date has been in possession of Barnwell Island.

The State of Georgia reasonably relied upon the State of South Carolina's agreement, memorialized in the Treaty of Beaufort, that *all* islands in the Savannah River are in Georgia. As a result of that agreement, Georgia had no duty to patrol the Savannah River in search of unauthorized South Carolina encroachments on the islands. Similarly, Georgia had no obligation and no reason to review the books of South Carolina grants and plats to ensure that South Carolina was not purporting to exercise jurisdiction over Savannah River islands. The decision in *Georgia v. South Carolina*, 257 U.S. 516 (1922), reaffirmed the Treaty's reservation of all islands to Georgia and further justified Georgia's reliance upon that

document. The mutual promises of the Treaty of Beaufort, as construed by the Court, cannot be overcome by South Carolina without the clearest evidence of prescription and acquiescence. South Carolina's evidence fails to prove any actual or constructive notice to the State of Georgia of an adverse claim to Barnwell Island by South Carolina prior to 1955, and since 1955, Georgia has been in actual possession of Barnwell Island.

3. The Barnwell Island Chronology serves to outline the evidence relevant to prescription and acquiescence.

The purpose of the Barnwell Island Chronology included as Appendix D to Georgia's Exceptions and Brief is to list the conflicting evidence regarding the jurisdictional location of Barnwell Island in a historical schematic form for convenient reference of the Court. The purpose is not to provide a tally sheet for the Court to add each State's activities on the Barnwell Islands and determine the highest score. Georgia is not asking this Court to resolve the few factual disputes in this case, but, rather, to review the weight given to those facts in light of the applicable legal principles. Such a review will confirm that the Special Master gave undue weight to one family's unpublished and unrecorded deeds and letters, based his conclusion as to a general perception of jurisdictional location on unpublished diaries and manuscripts which contain only innuendo concerning the State boundary, and used tax deeds which are so vague as to be legal nullities in arriving at a finding of long-continued exercise of South Carolina jurisdiction and, even more attenuated, in concluding that the State of Georgia acquiesced in South Carolina's claim. Because acquiescence is

equivalent to passive consent, knowledge on the part of the acquiescing state is crucial. Acquiescence can be inferred only if Georgia knew, or had reason to know, of events detracting from her sovereignty. *See, e.g., Rhode Island v. Massachusetts*, 40 U.S. (15 Pet.) 233, 272-74 (1841); *Indiana v. Kentucky*, 136 U.S. 479, 510 (1980). Since the contents of unpublished and unrecorded documents could not constitute notice to the State of Georgia, they were omitted from the chronology showing conflicting evidence of a jurisdictional location, as indicated on the first page of the chronology. Appendix D at D-1.

However, a review of the chronology reveals that Georgia did inadvertently omit the listing of three (3) dates for which documents were recorded:

(1) An 1871 mortgage from two Barnwell brothers to two Barnwell sisters which referenced Rabbit, Long, and Hog Islands as being in South Carolina, S.C. Ex. B-10(9);

(2) An 1896 deed between the parties, referencing the islands as being in South Carolina, S.C. Ex. B-10(10); B-10(11); and

(3) Three deeds with attached plats, dated January 13, 1868, but not recorded until November 17, 1930, from the Trustees of the Marriage Settlement of Edward and Eliza Barnwell to three of the Barnwell children. S.C. Ex. B-10(4), B-10(5), B-10(6), B-10(7), B-10(8).[7]

Georgia has corrected the inadvertent omission of these recorded documents and has now included them in the revised Barnwell Island Chronology attached hereto

[7] The descriptions in these deeds and their questionable evidentiary value have previously been discussed. Ga. Brief at 25-26.

as Appendix J at J-4-7.[8] Georgia's numerous references in its brief to the 1871 mortgage, to the 1896 deed and to the deeds and plats recorded in 1930 belie any attempt to mislead on the part of Georgia. Ga. Brief at 23-27, 29. Counsel for Georgia regret any confusion or difficulty which may have been occasioned by this inadvertent error. With regard to cultivation, although it is Georgia's contention that private possession and cultivation provide no evidence of jurisdictional location, *supra*, at 7, Georgia has also responded to South Carolina's concerns by adding references to rice cultivation in the period 1848-1882, in an effort to provide a complete picture of the chronology. Appendix J at J-3 and 4.

4. Oyster Bed Island formed on the Georgia side of the geographic middle of the river; South Carolina's contention that Oyster Bed Island is in South Carolina because it emerged north of the channel which contained the majority of the water conflicts with *Georgia v. South Carolina*, 257 U.S. 516 (1922).

South Carolina has not contested Georgia's assertion to the Court that Oyster Bed Island, which formed in the

[8] South Carolina protests that the chronology omits a number of recorded deeds such as S.C. Ex. B-10(2) through B-10(11). S.C. Response at A-1. Georgia has corrected the chronology to include B-10(4) through B-10(11), as explained above. The Marriage Settlement, dated June 14, 1832, S.C. Ex. B-10(2), contains no reference at all to any islands. Similarly, S.C. Ex. B-10(3), the acknowledgement by the Barnwell children dated January 21, 1868, provides no reference to islands or even to the Savannah River in the description of the property received. For this reason these documents have not been included in the chronology.

Savannah River in the 1870's and 1880's, lies on the Georgia side of the geographic middle of the river. Rather, South Carolina seeks to uphold the Special Master's recommendation concerning Oyster Bed Island by arguing that the island "arose from a shoal which lay to the north of the northern channel, containing that channel's flow." S.C. Response at 42. The area which later became Oyster Bed Island was a major shoal lying between channels of the river, which from time to time emerged as an island in the river. T-III-386-92. Although the greater portion of the Savannah River outflow may have discharged through channels south of the shoal, as South Carolina contends, the flow north of the shoal certainly cannot be described as "de minimus," even based on the testimony of South Carolina's own witness, T-XVII-65-66, and the Master's findings do not support that assertion. Ist Report at 95, and at Appendix F (Basic chart with the boundary line as found by the Special Master).

The Special Master has acknowledged that he "divert[ed] from the doctrine of *medium filum acquae* as established by the 1922 decision of this Court" in recommending a boundary south of Oyster Bed Island. Ist Report at 113. South Carolina's argument that the recommendation can be justified by comparing the amount of river water flowing north and south of the shoal area in 1787 is likewise inconsistent with the Court's statement in *Georgia v. South Carolina* that the boundary stream, according to the Treaty, may be "narrow and shallow and insignificant in comparison with the adjacent parts of the river." 257 U.S. at 521.

Even if, as the Master recommends, islands forming after 1787 are in Georgia only if they form on the Georgia side of the middle of the river, Ist Report at 88, it is clear, and South Carolina does not assert to the contrary, that Oyster Bed Island emerged on the Georgia side of the middle of the river as it existed both in 1787 and at the time of emergence. The Special Master's reliance upon the location of the navigation channel and South Carolina's argument concerning the relative amounts of water flowing north and south of Oyster Bed Island provide no basis for divergence from the directives of *Georgia v. South Carolina*.

CONCLUSION

For the reasons asserted in Georgia's Exceptions and Brief and in the foregoing Rebuttal Brief, the State of Georgia respectfully urges the Court to hold that Barnwell Island and Oyster Bed Island lie within the boundaries of the State of Georgia.

Respectfully submitted,

MICHAEL J. BOWERS
Attorney General

H. PERRY MICHAEL
Executive Assistant Attorney General

WILLIAM B. HILL, JR.
Deputy Attorney General

PATRICIA T. BARMEYER
Senior Assistant Attorney General

SARAH EVANS LOCKWOOD
Special Assistant Attorney General

PLEASE ADDRESS ALL
COMMUNICATIONS TO:
PATRICIA T. BARMEYER
Senior Assistant
Attorney General
132 State Judicial Bldg.
Atlanta, Georgia 30334
(404) 656-7298

APPENDIX I



SAVANNAH WATERFRONT, 1864
GA. EX. 420

APPENDIX J

REVISED BARNWELL ISLAND* CHRONOLOGY

Evidence That Barnwell Island Is In South Carolina

Evidence That Barnwell Island Is In Georgia

6/9/1732 The Charter of Georgia. Ga.Ex. 6.

12/4/1759 Tannatt's petition for grant of two small marsh islands in Savannah River. Ga.Ex. 93.

Post-Revolutionary Compilation Plat of Survey for Tannatt, dated 5/12/1760, showing "two marsh islands." Ga.Ex. 94.

12/3/1760 Grant signed to Tannatt for two marsh islands in Savannah River. Ga.Ex. 95.

4/22/1763 Appraisement of Tannatt's Estate includes "165 acres marsh." Ga.Ex. 261.

9/13/1764 Tannatt's estate's advertisement for sale of 160 acres, two marsh islands in Savannah River. "The Georgia Gazette," September 13, 1764. Ga.Ex. 262.

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*The largest island, called Hog by the Barnwells, and the small island just south and east, called Long by the Barnwells.

Unpublished and unrecorded letters, diaries, deeds and other personal papers are omitted. For deeds and plats, the date given is the date of recording.

Evidence in South Carolina	Evidence in Georgia
	4/28/1787 The Treaty of Beaufort. Ga.Ex. 39.
	8/9/1787 Congressional Resolution ratifying the Treaty of Beaufort. Ga.Ex. 45.
	2/1/1788 Ga. ratification of Treaty of Beaufort. Ga.Ex. 43.
	2/29/1788 S.C. ratification of Treaty of Beaufort. Grimke's *Public Laws*, 460. Ga.Ex. 44.
8/3/1795 Grants and plats to Hezekiah Roberts. S.C.Ex. B-1,2,3,4.	
3/24/1813 Grant and plat to Archibald Smith of "three marsh islands" containing 16, 104, and 42 acres. S.C.Ex. B-5,6.	
1818 Sturgis and Early, "Map of the State of Georgia" failed to color the Barnwell Islands as part of Georgia. S.C.Ex. GM-10A, Ga.Ex. 110.	
	1825 Payment of taxes on "104 Acres Land Marsh Chatham" in Ga. by Archibald Smith. Ga.Ex. 398.

Evidence in South Carolina	Evidence in Georgia
	1830 See 1831 below.
	1831 Chatham Co., Ga., Tax Digest entry for Estate of Archibald Smith: "104 acres Land Marsh Chatham County." "Same return for 1830." Ga.Ex. 401.
	5/17/1831 Inventory of Smith's Estate recorded in Chatham Co., Ga., shows "3 Islands Marsh." Ga.Ex. 400; S.C.Ex. B-10(11).
1848 Chart indicating rice cultivation on the largest Barnwell Island. Ga.Ex. 142.	
	1866 U.S. Coast Survey: "Topography of . . . Batteries Tatnall & Barnwell, Georgia." Ga.Ex. 163.
1870 Beaufort County, S.C., tax records reflect that taxes were paid by or on behalf of the Barnwell family from 1870-1930's. (This entry is not repeated for each of these years.) S.C.Ex. B-13, 14.	

Evidence in South Carolina

5/8/1871 Mortgage from Woodward and Archibald S. Barnwell to Charlotte C. Barnwell and Eliza A. Barnwell of western part of Rabbit Island (40.05 acres), Long Island, eastern part of Hog Island (39 acres) including the western half of Battery Square, "in Beaufort District in the State of South Carolina." S.C.Ex. B-10(9).

1875 Version of Platen's map, "Chatham County, State of Georgia," appended to his manuscript book does not color Barnwell Islands in Chatham Co. In manuscript, Barnwell Islands not named in the enumeration of river islands. S.C.Ex. G-9, GM-11.

1882 Rice cultivation on the islands ceased. S.C.Ex. B-21(81).

Evidence in Georgia

1875 Version of Platen map, "Chatham County, State of Georgia," color indicates naval battery (Ft. Tatnall) and Long Island in Chatham. Ga.Ex. 461.

1875 Another version of Platen's map shows under "places of Historical Interest," in Chatham Co., "Fort Tatnall, on a small sandy spur in front of Fort Jackson." Ga.Ex. 462.

7/25/1881 Agreement dated 3/2/1823, between Screven, Bond, and Archibald Smith, and annexed plat, showing Barnwell Islands labelled "Smith's Land," and "Boundary Creek" separating the islands from the South Carolina shore. Ga.Ex. 397, S.C.Ex. B-9.

Evidence in South Carolina

10/27/1896 Chatham County, Ga. recording (**11/16/1896** Beaufort County, S.C. recording): Deed from Archibald Smith Barnwell and Woodward Barnwell to Charlotte Cuthbert Barnwell and Eliza Ann Barnwell of western half of Rabbit Island (40.05 acres), Long Island, eastern part of Hog Island (39 acres), including the western half of Battery Square, "in Beaufort District in the State of South Carolina." S.C.Ex. B-10(10); B-10(11).

Evidence in Georgia

1911 U.S. Dept. of Agriculture Soil Map showing Barnwell Islands (except for Rabbit) in Georgia. Ga.Ex. 424.

1916 Decision in *Georgia Rwy & Power Co. v. Wright*, 146 Ga. 29 (1916): "[A]ll the Savannah River where it is broken by islands, which is between the island and the Georgia shore, is within the jurisdiction and sovereignty of Georgia, and all improvements constructed thereon are property subject to taxation within this State." 146 Ga. at 32.

Evidence in South Carolina	Evidence in Georgia
	1917 U.S. Coast & Geodetic Survey Publication locates triangulation stations on Barnwell Island as being in Georgia. Ga.Ex. 421, 422.
	1920 U.S. Corps of Engineers Map, Savannah Quadrangle, showing Barnwell Islands (except Rabbit Island) in Georgia. Ga.Ex. 425.
	1922 *Georgia v. South Carolina*, 257 U.S. 516 (1922): "Where there are islands the [boundary] line is midway between the island bank and the South Carolina shore when the water is at ordinary stage." 257 U.S. at 523.
11/17/1930 Deed dated 1/13/1868, from Trustees of Marriage Settlement of Edward and Eliza Barnwell to Woodward Barnwell, of Rabbit Island (40.05 acres) and Long Island "in Beaufort District in the State of South Carolina," with attached plat. S.C.Ex. B-10(6); B-10(5).	

Evidence in South Carolina	Evidence in Georgia
11/17/1930 Deed dated 1/13/1868, from Trustees of Marriage Settlement of Edward and Eliza Barnwell to Archibald S. Barnwell, of eastern part of Hog Island (39 acres) including western half of Battery Square "in Beaufort District in the State of South Carolina," with attached plat. S.C.Ex. B-10(7); B-10(4).	—
11/17/1930 Deed dated 1/13/1868, from Trustees of Marriage Settlement of Edward and Eliza Barnwell to Leila A. Barnwell, of Hog Island (39 acres minus 3⅓ acres on Battery Square) "in the District of Beaufort in the State of South Carolina," with attached plat. S.C.Ex. B-10(8); B-10(4).	
	1932 U.S.G.S. Map, "State of Georgia," showing the Barnwell Islands (except Rabbit) in Georgia. Ga.Ex. 433.

Evidence in South Carolina	Evidence in Georgia
1932 Arrest Warrant, Indictment, Judgment and Sentence of the Court of General Sessions of Beaufort County, S.C., for two men for shooting Eustace Pinckney in Beaufort County, S.C., reportedly on Barnwell Island. S.C.Ex.B-56, 60, S.C.Ex.-C.	
10/6/1935 Beaufort County Sheriff McTeer seized and posted the lands of Miss C. C. Barnwell, C. C. Barnwell and E.A. Barnwell described in the deeds of 2/28/1940, listed below. S.C.Ex. B-10(13), 60.	
2/1936 Sheriff McTeer attempted a sale of the lands of Miss C. C. Barnwell, C.C. Barnwell and E.A. Barnwell described in the deeds of 2/28/1940, listed below. S.C.Ex. B-10(13), 60.	
1937 South Carolina State Highway Department Map showing the Barnwell Islands in South Carolina. S.C.Ex. GM-13.	
1939 State Planning Board of Ga. Sketch showing the Barnwell Islands in S.C. S.C.Ex. GM-14.	
	1940 Ga. State Highway Map, Chatham Co., showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 426.

Evidence in South Carolina	Evidence in Georgia
2/28/1940 Deed from Sheriff McTeer of Beaufort County, S.C., to Forfeited Land Commission (FLC) of land of Miss C.C. Barnwell. S.C.Ex. B-10(13).	
2/28/1940 Deed from Sheriff McTeer to FLC of land of C.C. Barnwell. S.C.Ex. B-10(13); D-5.	
2/28/1940 Deed from Sheriff McTeer to FLC of land of E.A. Barnwell. S.C.Ex. B-10(13).	
1941 Beaufort County, S.C., tax records (for 1952-1956, the Jasper County Tax records) reflect that taxes were paid by Eustace B. Pinckney from 1941-1956. S.C.Ex. B-13. (This entry is not repeated for each of these years.)	
No Date Given (pre-1952) Deed dated 1/6/42, from FLC of land formerly owned by C.C. Barnwell, E.A. Barnwell, and Miss C.C. Barnwell to Eustace B. Pinckney, Sr. S.C.Ex. B-10(14).	

Evidence in South Carolina	Evidence in Georgia
1946 Arrest Warrant, Indictment, Judgment and Sentence of the Court of General Sessions of Beaufort County, South Carolina for two men for stealing three hogs in Beaufort County, South Carolina, reportedly on Barnwell Island. S.C.Ex. B-57, 60.	
11/13/47 Plat of tract for Corps of Engineers Disposal Area showing a small portion of Long Island. S.C.Ex. B-10(16).	
	12/11/52 Complaint filed in *United States of America v. 450 Acres, More or Less, Known as Barnwell Island, Situate in Chatham County, Georgia, and E.B. Pinckney*, (S.D. Ga.) Ga.Ex. 378.
	1/23/53 Service of Notice of Complaint in *United States v. 450 Acres* on Auditor, Forfeited Land Commission, Sheriff, & Treasurer of Beaufort County, S.C. Ga.Ex. 378.
2/19/1953 *U.S. v. 450 Acres*, complaint dismissed, on the ground that the property lay in South Carolina. Ga.Ex. 378.	**4/1/53** Intervention of Georgia in *United States v. 450 Acres*. Ga.Ex. 378.
	1953 Ga. State Highway Map, Chatham Co., Ga., showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 427.

Evidence in South Carolina	Evidence in Georgia
1955 "Savannah, Ga.-S.C." U.S.G.S. Quadrangle, showing all the Barnwell Islands in South Carolina. S.C.Ex. GM-26.	**1955** U.S. Corps of Engineers Map, "Barnwell Island, Chatham County, Georgia." Ga.Ex. 382.
	3/22/55 *United States v. 450 Acres of Land*, 220 F.2d 353 (5th Cir. 1955), reversing the District Court and holding that Barnwell Island is in Georgia.
9/8/55 S.C. Motion for Leave to File Complaint, *South Carolina v. Georgia*. Ga.Ex. 379.	
	9/26/55 Georgia's Brief in Opposition to South Carolina's Motion for Leave to File Complaint, *South Carolina v. Georgia*. Ga.Ex. 379.
	10/10/55 Denial of S.C.'s Motion for Leave to File Complaint in *South Carolina v. Georgia*. 350 U.S. 812 (1955).
	10/10/55 Denial of cert. in *U.S. v. 450 Acres of Land, More or Less, Known as Barnwell Island, Situate in Chatham County, Georgia v. United States of America*, 350 U.S. 826 (1955).

Evidence in South Carolina	Evidence in Georgia
1956 Map showing Barnwell Island in South Carolina and titled "Port Facilities, Savannah, Georgia, Savannah District Authority." S.C.Ex. BM-6.	**3/19/56** Ga. Resolution granting to U.S. a spoilage easement to Barnwell Island. GA 381.
	9/21/56 Deed of a perpetual spoilage easement dated 3/2/56 from Ga. to the U.S. Ga.Ex. 383.
1/2/57 S.C. Motion for Leave to File Complaint, *South Carolina v. Georgia*. Ga.Ex. 380.	**2/28/57** Ga. Brief in Opposition to S.C.'s Motion for Leave to File Complaint, *South Carolina v. Georgia*. Ga.Ex. 351.
	3/11/1957 Denial of S.C.'s Motion for Leave to File Complaint in *South Carolina v. Georgia*, 352 U.S. 1030 (1957). Ga.Ex. 380.
	1957 U.S.G.S. Map, "Savannah, Ga., – S.C.," showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 436.
1959 "General Highway Map, Jasper County, South Carolina," S.C. Highway Dept. S.C.Ex. GM-15.	**1959** U.S.G.S. Map, State of Georgia" showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 433.
	1960 Ga. Highway Dept. Map, "General Highway Map, Chatham County, Ga.," showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 428.

Evidence in South Carolina	Evidence in Georgia
c. 1961 "Mosaics of Georgia Coastal Area," Georgia Highway Department. S.C.Ex. GM-29.	**1961** Ga. Highway Dept. Map, in cooperation with U.S. Dept. of Commerce, "Savannah, Ga.," showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 431.
1965 U.S. Soil Conservation Service Photos BQO-3GG-86 and BQO-2GG-280 showing Barnwell Islands in S.C. S.C.Ex. GM-17.	**1965** Ga. Highway Dept. Map. "General Highway Map, Chatham County, Ga." showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 429.
1969 "General Highway Map, Jasper County, S.C." S.C. Highway Dept. S.C.Ex. GM-16.	**1966** U.S. Corps of Engineers Map, "Real Estate, Savannah Harbor," showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 363.
	1970 U.S.G.S. Map, "State of South Carolina," Showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 435.
	1970 U.S.G.S. Map, "State of Georgia," showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 434.
	6/3/70 Letter from State Geologist, S.C. State Development Board, to Chief Topographic Engineer, U.S.G.S., indicating that corrections to the proposed 1970 edition of U.S.G.S. base map "State of South Carolina" (Ga.Ex. 435) would be submitted within 10 days. Ga.Ex. 475.

Evidence in South Carolina	Evidence in Georgia
	6/16/70 Letter from Alan J. Lehocky, Division of Geology, S.C. State Development Board, to Chief Topographic Engineer, U.S.G.S., setting forth S.C's corrections to the proposed edition of the U.S.G.S. base map "South Carolina" (Ga. Ex. 435) and noting no corrections concerning the boundary between Ga. and S.C. Ga.Ex. 476.
	1971 "Savannah, Ga. – S.C." U.S.G.S. Quadrangle, showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 219.
	1/28/72 Chatham Co., Ga., Tax Map, showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 441.
	1974 U.S.G.S. "Savannah, Georgia-South Carolina," showing Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 437.

Evidence in South Carolina	Evidence in Georgia
9/80 *Resource Atlas*, prepared by South Carolina Wildlife and Marine Resources Dept. for the United States Fish and Wildlife Service, Office of Biological Services, Plate 16, showing the Barnwell Islands in S.C. S.C.Ex. GM-61.	**9/80** *Resource Atlas*, prepared by South Carolina Wildlife and Marine Resources Dept. for the United States Fish and Wildlife Service, Office of Biological Services, Plate 42, showing the Barnwell Islands (except Rabbit) in Ga. Ga.Ex. 467.
	No Date Current Jasper County, S.C., Tax Map, Rabbit Island Area, showing Barnwell Islands (except Rabbit) in Ga. S.C.Ex. BM-7.